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Attorneys for Defendants JPMORGAN CHASE BANK, N.A.; CALIFORNIA
RECONVEYANCE COMPANY; and MORTGAGE ELECTRONIC REGISTRATION
SYSTEMS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN FRANCISCO DIVISION

EMIL P. MILYAKOV;
MAGDALENA A. APOSTOLOVA

Plaintiffs,

v.

JP MORGAN CHASE, N.A.; HSBC BANK
USA, NA; CALIFORNIA
RECONVEYANCE CO.; PAUL
FINANCIAL, LLC; MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC (MERS); FOUNDATION
CONVEYANCING, LLC; AND DOES 1
THROUGH 100,

Defendants.

Case No. 11-cv-2066-WHA

**DEFENDANTS JP MORGAN CHASE
BANK, N.A., CALIFORNIA
RECONVEYANCE COMPANY AND
MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC.'S
REQUEST FOR ADDITIONAL TIME TO
COMPLY WITH ORDER REQUESTING
SUPPLEMENTAL BRIEFING;
DECLARATION OF JOHN C. HEDGER
IN SUPPORT**

Judge: Honorable William Alsup

Date Action Filed: April 20, 2011

Action Removed: April 27, 2011

Trial Date: Not yet assigned

Defendants JPMORGAN CHASE BANK, N.A. (“Chase”); CALIFORNIA RECONVEYANCE COMPANY (“CRC”); and MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC. (“MERS”) (collectively, “Defendants”) hereby submit this Request for Additional Time to Comply with Order Requesting Supplemental Briefing. Defendants did not receive notice of the court’s order until today, March 1, 2012. More time is required for Defendants to file the evidentiary materials requested in the order.

I. FACTUAL AND PROCEDURAL BACKGROUND

Plaintiffs filed this action in San Francisco County Superior Court, Case No. CGC-11-510357 on April 20, 2011. After the case was removed to federal court on April 27, 2011, Plaintiffs filed a First Amended Complaint (“FAC”) on June 29, 2011. Plaintiffs asserted seven causes of action: 1. Cancellation of Deed Instruments; 2. Slander of Title; 3. Injunctive Relief; 4. Violation of California Civil Code Section 2923.5; 5. Wrongful Foreclosure; 6. Quasi Contract; and 7. Unfair Competition [Violation of Cal. Bus. & Prof. Code 17200 et. Seq.]. In response, Defendants filed a Motion to Dismiss the entire FAC pursuant to FRCP 12(b)(6). Defendants’ motion was heard before this court on September 2, 2011 and this court ruled as follows:

Plaintiffs’ second cause of action for slander of title and third cause of action for injunctive relief were dismissed. Defendants’ Motion to Dismiss was converted into a Motion for Summary Judgment as to three of Plaintiffs’ causes of action: Plaintiffs’ First Cause of Action for Cancellation of Deed, Plaintiffs’ Fifth Cause of Action for Wrongful Foreclosure, and Plaintiffs’ Sixth Cause of Action for Quasi Contract, also referred to by the court as Unjust Enrichment. Plaintiffs were allowed to conduct discovery for 10 weeks in order to allow them to develop facts in support of the three causes of action. The remaining causes of action survived.

The hearing on the Motion for Summary Judgment occurred on December 1, 2011. This court granted summary judgment as to the claims for Cancellation of Deed and Wrongful Foreclosure, while finding enough alleged in Plaintiffs’ FAC, absent a showing by Defendants, to allow the claim of unjust enrichment to proceed.

Plaintiffs filed a Second Amended Complaint on December 9, 2011. Defendants, in turn, filed a Motion to Dismiss the Second Amended Complaint on or about December 27, 2011.

Following an unsuccessful settlement conference on February 16, 2012, Defendants' Motion to Dismiss was heard by the court on February 23, 2012.

This court issued an Order Requesting Supplemental Briefing on February 24, 2012. Email notice of the order was not communicated to defense counsel through the CM/ECF system. Defendants discovered the existence of the court's order today, March 1, 2012, at approximately 11:30 a.m. Defendants wish to provide the requested supplemental briefing and hereby seek to be allowed more time to comply.

II. DEFENDANTS WERE UNAWARE OF THE COURT'S ORDER OF FEBRUARY 24, 2012 UNTIL MARCH 1, 2012

The court ordered Defendants "to file evidentiary materials and a brief . . . regarding . . . Ms. Irby and her authority to sign the assignment of the deed of trust . . . and the substitution of trustee." The court gave Defendants until February 29, 2012 at noon to provide this information.

Defendants were unaware of the Court's order until Plaintiffs e-mailed Defendants' counsel about lack of compliance at 11:29 a.m. on March 1, 2012. Counsel reviewed the email at 11:35 a.m. and requested staff to investigate. *Declaration of John C. Hedger*, ¶2, Exhibit A. It was determined that the CM/ECF system did not provide email notification of the order. *Id.*

Later in the day, Defendants' counsel spoke to William Noble, the Civil docketing clerk in Courtroom 8. *Declaration of John C. Hedger*, ¶3. Mr. Noble explained that the subject order was issued in the morning prior to current counsel and his staff being listed for CM/ECF service later that day. *Id.* As a result, notice was sent to individuals that no longer work with Defendants' counsel and no longer represent Defendants. *Id.* Defendants' counsel also left a lengthy message with Dawn Toland, the Calendar Clerk and Courtroom Deputy for Courtroom 8, explaining why Defendants have not complied with the Court's order. *Id.* This voice message was not returned. *Id.*

III. DEFENDANTS NEED MORE TIME TO COMPLY WITH THE COURT'S ORDER OF FEBRUARY 24, 2012

Even if Defendants had received notice of the court's order on February 24, 2012, Defendants could not have provided the requested materials by February 29, 2012. The court is requesting evidentiary materials of Ms. Irby's authority to sign two documents. It is believed that

1 declarations will be required to provide the evidence of Ms. Irby's authority. *Declaration of John*
 2 *C. Hedger, ¶4.* Due to Defendants' various corporate structures, the proper individuals to provide
 3 declarations will need to be identified and then given authorization from superiors. *Id.* Internal
 4 counsel for each of the Defendants will need to also be involved with verifying the accuracy of
 5 information contained in the declarations. *Id.* Therefore, Defendants request additional time to
 6 comply with the court's order.

7 Defendants wish to have until March 30, 2012 to provide the evidentiary materials
 8 requested. Defendants' counsel has communicated with Plaintiffs about the desired additional
 9 time to comply with the court's order. *Declaration of John C. Hedger, ¶5.* Plaintiffs indicated
 10 they are only willing to give Defendants three days to comply with the order. *Id.*

11 **IV. CONCLUSION**

12 For the foregoing reasons, Defendants seek to have the court issue an amended order
 13 whereby Defendants will file evidentiary materials and a brief with regard to Ms. Irby's authority
 14 to sign the assignment of the deed of trust and the substitution of trustee no later than March 30,
 15 2012.

16 Dated: March 1, 2012

Respectfully submitted,

BRYAN CAVE LLP

19 By: s/John C. Hedger
 20 John C. Hedger

Attorneys for Defendants
 JPMORGAN CHASE BANK, N.A.; CALIFORNIA
 RECONVEYANCE COMPANY; and MORTGAGE
 ELECTRONIC REGISTRATION SYSTEMS, INC

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DECLARATION OF JOHN C. HEDGER

I, John C. Hedger, declare:

1. I am an attorney duly licensed to practice law before the United States District Court, Northern District of California. I am an attorney with the law firm of Bryan Cave LLP, counsel of record for Defendants JPMORGAN CHASE BANK, N.A.; CALIFORNIA RECONVEYANCE CO.; MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.; and MERSCORP, INC. (collectively, "Defendants"). I submit this Declaration in support of Defendants' Request For Additional Time To Comply With Order Requesting Supplemental Briefing. I have personal knowledge of the matters set forth below, and if called upon to testify regarding such matters, I could and would competently testify thereto.

2 Defendants were unaware of the Court's order until Plaintiffs e-mailed Defendants' counsel about lack of compliance at 11:29 a.m. on March 1, 2012. I reviewed the email at 11:35 a.m. and requested staff to investigate. It was determined that the CM/ECF system did not provide email notification of the order. A true and correct copy of emails between Plaintiffs and myself are attached hereto as Exhibit A.

3. At approximately 12:30 p.m., I left messages with Dawn Toland and William Noble. At about 1:20 p.m., I spoke to William Noble, the Civil docketing clerk in Courtroom 8. Mr. Noble explained that the subject order was issued in the morning prior to current counsel and his staff being listed for CM/ECF service later that day. As a result, notice was sent to individuals that no longer work with Defendants' counsel and no longer represent Defendants. My lengthy voice message left with Dawn Toland, the Calendar Clerk and Courtroom Deputy for Courtroom 8, explaining why Defendants have not complied with the Court's order, was not returned.

4. I believe that declarations will be required to provide the evidence of Ms. Irby's authority. Due to my clients' various corporate structures, the proper individuals to provide declarations will need to be identified and then given authorization from superiors. Internal counsel for each of my clients will need to also be involved with verifying the accuracy of information contained in the declarations.

5. I communicated with Plaintiffs about the desired additional time to comply with the

1 court's order. Plaintiffs indicated they are only willing to give my clients three days to comply
2 with the court's order.. A true and correct copy of emails between Plaintiffs and myself are
3 attached hereto as Exhibit A.

4 I declare under penalty of perjury under the laws of the State of California that the
5 foregoing is true and correct and that this declaration was executed on this 1st day of March of the
6 year 2012 in San Francisco, California.

7 s/ John C. Hedger
8 John C. Hedger
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